RE CHS

HIGH COURT MALAYA, KUALA LUMPUR
AUGUSTINE PAUL JC
[ORIGINATING SUMMONS NO: 25-30-97]
13 JUNE 1997

FAMILY LAW: *Children - Customary marriage - Registration under Law Reform (Marriage and Divorce) Act 1976 - Consent of father - Father absconded and untraceable - Whether impracticable to obtain father's consent - Whether court to give consent - Law Reform (Marriage and Divorce) Act 1976, s. 12*

CIVIL PROCEDURE: *Mode of commencement - Application under Law Reform (Marriage and Divorce) Act 1976 - Act stipulated that application to judge in chambers - Whether to commence by way of originating summons - Proceeding commenced by originating motion - Effect - Whether an irregularity - Whether curable - Rules of the High Court 1980, O. 2 r. 1, O. 5, O. 28 r. 8(1), O. 92 r. 4 - Law Reform (Marriage and Divorce) Act 1976, s. 12(3)*

FHL in this case is a minor. In 1995 she married one Lew in accordance with Chinese customary rites. In 1997, while expecting her first child, and six months pregnant, FHL sought to register the marriage pursuant to the provisions of the Law Reform (Marriage and Divorce) Act 1976 ('the Act'). However, since she was under the age of 21, and by virtue of s. 12(1)(a) of the Act, FHL needed the consent of her father before the marriage could be so registered. FHL was unable to obtain such consent, as her father had absconded and was untraceable. This being the case, FHL's mother, CHS, the applicant herein, applied to the court by way of originating motion for an order that the requirement of the consent of FHL's father be dispensed with and that she be allowed to give the necessary consent. Before the learned judge, questions arose as to: (i) whether the applicant could be allowed to give the consent; (ii) whether it was proper of the applicant to have commenced by way of originating motion when s. 12(3) of the Act mandated that such an application 'shall be made to a judge in chambers', and if not, whether the court could rectify the same and allow amendment to the applicant's prayer.

Held:

[1] The legal right of the mother to give the consent arises only when the father is dead and not on any other ground. The corollary is that the applicant is not the proper person to give the consent as the father in this case is not dead. This interpretation flows from the plain meaning of the words employed in s. 12(1)(b) of the Act. (p 657 e-f)

[2] The plain meaning given to sub-s. (1) of s. 12 will not produce an absurdity in view of the remedy provided by sub-s. (2) of the section, where the court may give consent if: (i) it is satisfied that the consent of any person is being withheld unreasonably; or (ii) all those persons who could give consent under sub-s. (1) are dead; or (iii) it is impracticable to obtain such consent. (p 658 e-f)

[3] On the facts, it is impracticable to obtain the consent of the father as he is not available. Accordingly, the proper procedure to be followed is for the applicant to apply for an order to enable the court to give the required consent. (p 658 h)

[4] As s. 12 of the Act requires an application under it to be made in chambers, the proceeding ought to be by way of originating summons and not originating motion as was done here. However, bearing in mind the provisions of O. 2 r. 1 and O. 92 r. 4 Rules of the High Court 1980, the fact that nobody would be prejudiced by the *ex parte* application herein, and the urgency of the matter as FHL is six months pregnant, the court would allow CHS' application and treat the originating motion as an originating summons. (p 659 c-f)

[4a] Also, bearing in mind the urgent nature of the application and the fact that the amendment sought could be conveniently inserted in the originating summons, the court would allow the oral application to amend the prayer to enable the court to give the required consent. (p 663 f)

[5] The fact that the girl involved is pregnant is a matter that requires serious consideration in the context of Malaysian moral values. The facts further showed that the couple has cohabited as husband and wife since September 1995. In the circumstances, this is a fit and proper case where the court should exercise its discretion to give consent as it is impracticable to obtain the consent of the father. (p 663 d-g)

[Application granted.]

Case(s) referred to:

Chiu Wing Wah & Ors v. Ong Beng Cheng [1994] 1 CLJ 313 ***(refd)***

Glass v. Glass [1960] 32 WWR 321 ***(refd)***

Harkness v. Bell's Asbestos and Engineering Ltd [1966] 3 All ER 843 ***(refd)***

Ho Yoke Kwei & Anor v. Ong Eng Hing [1997] 4 MLJ 292 ***(refd)***

Krishnadas Achutan Nair & Ors v. Maniyam Samy Kano [1997] 1 CLJ 636 ***(refd)***

Kuah Kok Kim v. Chong Lee Leong Seng Co (Pte) Ltd [1991] 2 CLJ 1634; [1991] 4 CLJ (Rep) 535 ***(refd)***

Lee Phet Soon v. Hock Thai Finance Corp Bhd [1994] 4 CLJ 687 ***(refd)***

Loo Choy Meng v. Ong Cheong Hoe - Gamuda Sdn Bhd, Garnishee [1990] 1 MLJ 445 ***(refd)***
Metroinvest Anstalt & Ors v. Commercial Union Assurance Co plc [1985] 2 All ER 318 ***(refd)***
Mohamed Ismail v. Tan Sri Hj Osman Saat & Ors [1982] CLJ 553; [1982] CLJ (Rep) 581 ***(refd)***
Pacific Centre Sdn Bhd v. United Engineers (M) Bhd [1984] 2 CLJ 56; [1984] 2 CLJ (Rep) 319 ***(refd)***
PP v. Mohd Ali Jaafar [1997] 2 CLJ Supp 150 ***(refd)***
Re Baynes [1961] 36 WWR 239 ***(refd)***
Re K (An infant) [1964] ALR 363 ***(refd)***
Shanmugam Munusamy v. Pappah Chinniah Nadar [1994] 2 CLJ 265 ***(refd)***
Wong Yoon Chai v. Lee Ah Chin [1981] 1 MLJ 219 ***(refd)***

Legislation referred to:
Law Reform (Marriage and Divorce) Act 1976, s. 12(1)(a), (b), (2), (3)
Rules of the High Court 1980, O. 2 rr. 1, 3, O. 5, O. 20 rr. 5, 7, 8, O. 28 r. 8(1), O. 89, O. 92 r. 4

Other source(s) referred to:
Bromley's Family Law, 8th edn, p 43
Supreme Court Practice, 1967, p 291

For the applicant - Fatimah Tahir Ali; M/s SF Pang & Chandra

Reported by WA Sharif

JUDGMENT

Augustine Paul JC:
The issue for determination in this application is the person who can lawfully consent to the marriage of a person who has not completed his or her twenty-first year when the father of such person cannot be found.

CHS, the applicant, and her husband FCH are the natural parents of one FHL, a female, who was born on 1 January 1979. FCH left the matrimonial home in 1982 and cannot be found. FHL married one LEW in accordance with Chinese customary rites with the blessings of her mother, the applicant, on 3 September 1995. A dinner was held at the Pay Teck School Hall, Jalan Portugis on 3 September 1995 to celebrate the marriage. The dinner was hosted by the parents of LEW. FHL, is now expecting her first child and is desirous of having her marriage with LEW registered pursuant to the provisions of the Law Reform (Marriage and Divorce) Act 1976 ("the Act"). However, she is confronted with a problem. As she is under the age of 21 years the consent of her father is required before she can have her marriage duly registered under the Act. She is unable to get such consent as her father cannot be found. By this originating motion her mother, the applicant, prayed for an order that the

requirement of the consent of FCH be dispensed with as it is impracticable to obtain his consent and that she be allowed to give the necessary consent. The applicant filed a certificate of urgency to have the motion heard on an urgent basis. The grounds advanced for an expedited hearing are that FHL is now six months pregnant and the couple wishes to have the marriage registered in order to ensure the legitimacy and inheritance rights of the child.

The requirement of consent where one of the parties is under the age of 21 years depicts legislative wisdom. As *Bromley's Family Law*, 8th edn says at p. 43 the purpose of obtaining such consent is:

> ... to prevent minors contracting unwise marriages. Doubtless in 1753 Parliament was primarily concerned to see that property did not get into the hands of undesirable suitors; today its object is to cut down the number of potentially unstable unions.

The requirement of consent for the marriage of a person under the age of 21 years is governed by s. 12 of the Act ("the section"). The section reads as follows:

> (1) A person who has not completed his or her twenty-first year shall, notwithstanding that he or she shall have attained the age of majority as prescribed by the Age of Majority Act, 1971, nevertheless be required, before marrying, to obtain the consent in writing:
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> (a) of his or her father; or
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> (b) if the person is illegitimate or his or her father is dead, of his or her mother;
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> or
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> (c) if the person is an adopted child, of his or her adopted father, or if the adopted father is dead, of his or her adopted mother; or
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> (d) if both his or her parent (natural or adopted) are dead, of the person standing in *loco parentis* to him or her before he or she attains that age,
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> but in any other case no consent shall be required.
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> (2) Where the court is satisfied that the consent of any person to a proposed marriage is being withheld unreasonably or all those persons who could give consent under sub-section (1) are dead or that it is impracticable to obtain such consent, the court may, on application, give consent and such consent shall have the same effect as if it had been given by the person whose consent was required by sub-section (1).

(3) An application to the High Court under this section shall be made to a Judge in chambers.

(4) When an application is made to the High Court in consequence of a refusal to give consent, notice of the application shall be served upon the person who refused to give consent.

(5) Notwithstanding anything to the contrary in this Part consent to the marriage of a minor shall not be necessary if the minor has been previously married.

(6) There shall be no appeal from an order of a Judge under this section.

When the motion was called up for hearing in open court I asked learned counsel whether the application is in accordance with the requirements of the section. She submitted that as it is impracticable to obtain the consent of the father the proper person to give the consent is the mother as she is available. She added that sub-s. (2) of the section which deals with the power of the court to give the required consent is activated only when all the persons listed in sub-s. (1) of the section are incapable of giving such consent. I intimated to her that I am unable to accept the views advanced.

It is my view, as I explained to learned counsel, that on the facts of this case the person who can lawfully give the consent is the father as provided by sub-s. (1)(a) of the section or, if he is dead, the mother as provided by sub-s. (1)(b) of the section. Thus, the legal right of the mother to give the consent arises only when the father is dead and not on any other ground. The corollary is that the applicant is not the proper person to give the consent on the facts of this case as the father is not dead. This interpretation flows from the plain meaning of the words employed in the section and it is the function of a court to give effect to a statute according to its natural and ordinary meaning. In this regard I refer to *Krishnadas Achutan Nair & Ors v. Maniyam Samy Kano* [1997] 1 CLJ 636 where Gopal Sri Ram JCA in writing for the Federal Court said at p. 645:

> The function of a Court when construing an Act of Parliament is to interpret the statute in order to ascertain Legislative intent primarily by reference to the words appearing in the particular enactment. *Prima facie*, every word appearing in an Act must bear some meaning. For Parliament does not legislate in vain by the use of meaningless words and phrases. A judicial interpreter is therefore not entitled to disregard words used in a statute or subsidiary legislation or to treat them as superfluous or insignificant. It must be borne in mind that:
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> > As a general rule a Court will adopt that construction of a statute which will give some effect to all the words which is contains. Per Gibbs J in *Beckwith v. R* [1976] 12 ALR 333, at p 337.

> See also, *Commonwealth v. Baume* [1905] 2 CLR 405, at p. 414. Per Griffith CJ. Where it is impossible to give a full and accurate meaning to every word appearing in a section of a statute, the duty of the Court is to give the words an interpretation, 'that produces the greatest harmony and the least inconsistency': *Australian Alliance Assurance Co Ltd v. Attorney-General (Queensland)* [1916] St R Qd 135 at p 161, per Cooper CJ.

As I said in *PP v. Mohd Ali bin Jaafar* [1997] 2 CLJ Supp 150 at p. 158:

> Thus the fundamental rule of interpretation of a statue is to ascertain the intention of Parliament. If the words of a statue are in themselves precise and unambiguous the Court must give effect to them according to their natural and ordinary meaning, as the words themselves best declare the intention of Parliament. If, however, adhering to their grammatical and ordinary meaning would lead to some absurdity, or some repugnancy or inconsistency with the other parts of the statute, the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but no further (see *Trustees of the Kheng Chiu Tin Hon Kong and Burial Ground v. Collector of Land Revenue* [1992] 1 SLR 425).

The plain meaning given to sub-s. (1) of the section will not produce any absurdity in view of the remedy provided by sub-s. (2) of the section. It caters for anomalous situations as in the case at bar and authorises the court to give consent where:

> (a) it is satisfied that the consent of any person is being withheld unreasonably, or
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> (b) all those persons who could give consent under sub-section (1) are dead, or
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> (c) it is impracticable to obtain such consent.

The word "impracticable" is defined in the *Concise Oxford Dictionary* 9th edn as "impossible in practice". *Black's Law Dictionary*, 6th edn, says that although impossibility or impracticability of performance may arise in many different ways, the tendency has been to classify the cases into several categories, *inter alia*:

> Destruction, deterioration or unavailability of the subject matter or the tangible means of performance.

On the facts of this case it is impracticable to obtain the consent of the father as he is not available. Accordingly, the proper procedure to be followed is for the applicant to apply for an order to enable the court to give the required consent.

Learned counsel in a swift and skilful manoeuvre then orally applied:

(a) for the originating motion to be treated as an originating summons as sub-s. (3) of the section requires an application under the section to be made to a judge in chambers and

(b) for the prayers to be amended to enable the court to give the required consent under sub-s. (2) of the section.

Application To Treat The Originating Motion As An Originating Summons

As the section requires any application under it to be made in chambers the proceeding ought to be by way of an originating summons and not an originating motion as done in this case. The first application of learned counsel therefore requires a consideration of whether a wrong mode of commencement of a proceeding renders it a nullity thereby precluding a treatment of the originating motion as an originating summons. The different modes of commencing proceedings in the High Court are governed by O. 5 of the Rules of the High Court 1980 ("the RHC"). If in the case of a cause or matter begun by originating summons it appears to the court at any stage of the proceedings that it should be continued as if the cause or matter had been begun by writ then O. 28 r. 8(1) of the RHC expressly authorises the court to order the proceedings to continue as if the cause or matter had been so begun. No specific provision has been made in the RHC with regard to the other modes of commencing proceedings. This does not, in my opinion, mean that there is no power to correct the mode of commencing proceedings in the other cases. The rationale behind having a special provision to treat an originating summons as a writ is obvious, that is to say, it enables affidavits used in the originating summons to stand as pleadings which are required for a writ. Without explicit authorisation in the rules it would not be possible to achieve such a result. In other cases, however, a party in default may seek refuge under O. 2 and O. 92(4) of the RHC. They read as follows:

Order 2

(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

(2) Subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those

proceedings or any document, judgment or order therein or exercise its powers under these rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these rules to be begun by an originating process other than the one employed.

Order 92(4)

For the removal of doubts it is hereby declared that nothing in these rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

I had occasion to deal at some length with the equivalent of O. 2 of the RHC in the Subordinate Courts Rules 1980 in *Ho Yoke Kwei & Anor v. Chee Mian Poon* [1997] 1 CLJ 603. Order 2 of the RHC does away with the old distinction between a nullity and an irregularity. Every omission or mistake in practice or procedure is thus to be regarded as an irregularity which the Court can and should rectify so long as it can do so without injustice (see *Harkness v. Bell's Asbestos and Engineering Ltd* [1966] 3 All ER 843). On the manner of exercising the discretion to rectify an irregularity Cumming-Bruce LJ said in *Metroinvest Anstalt & Ors v. Commercial Union Assurance Co plc* [1985] 2 All ER 318 at p. 324:

I would say that in most cases the way in which the court exercises its power under O. 2 r. 1(2) is likely to depend on whether it appears that the opposite party has suffered prejudice as a direct consequence of the particular irregularity, that is to say the particular failure to comply with the rules. But I would construe O. 2 r. (2) as being so framed as to give the court the widest possible power in order to do justice.

It must be observed that O. 2 r. 1 of the RHC applies, *inter alia*, to the "form" of beginning a proceeding while r. 3 expressly provides that the court shall not wholly set aside any proceeding on the ground that the proceedings were required by any of the rules to be begun by an originating process other than the one employed. The inherent jurisdiction of the court under O. 92 r. 4 of the RHC can be exercised in a situation where a lacuna exists in the RHC and where the same causes a procedural injustice in that it does not provide an adequate remedy or remedies and the court is then not only entitled to fill the gap, but is obliged to do so, in order to avoid an injustice. (See *Loo Choy Meng v. Ong Cheong Hoe - Gamuda Sdn Bhd, Garnishee* [1990] 1 MLJ 445). In *Pacific Centre Sdn Bhd v. United Engineers (M) Bhd* [1984] 2 CLJ 56; [1984] 2 CLJ (Rep) 319 Edgar Joseph Jr J (as he then was) said:

> ... it is clear that the inherent jurisdiction of the Court includes all the powers that are necessary to fulfil itself as a court of law, to uphold, to protect, and to fulfil the judicial functions of administering justice according to law in a regular, orderly and effective manner.

The courts have, on numerous occasions, been confronted with procedural irregularities in commencing proceedings and have shown willingness to regularise the defect if satisfied that it does not prejudice the opposite party and that it is in the interests of justice to do so. In *Wong Yoon Chai v. Lee Ah Chin* [1981] 1 MLJ 219 where the application was made by way of a summons-in-chambers when it should have been commenced by originating summons the Federal Court held that it was an irregularity which was curable. In *Shanmugam Munusamy v. Pappah Chinniah Nadar* [1994] 2 CLJ 265 Edgar Joseph Jr SCJ, while sitting in the High Court, said that the failure to comply with the requirements of any rules in beginning proceedings should be treated as a mere irregularity which does not nullify the proceedings. In *Chiu Wing Wah & Ors v. Ong Beng Cheng* [1994] 1 CLJ 313 the Supreme Court did not find fault with the High Court's treatment of an originating summons as one made under O. 89 of the RHC. In *Kuah Kok Kim v. Chong Lee Leong Seng Co (Pte) Ltd* [1991] 2 CLJ 1634; [1991] 4 CLJ (Rep) 535 the petition bore the heading or title of a companies winding-up petition when it should have been that of an originating petition. The Singapore Court of Appeal held that the defect is an irregularity which is curable. In *Mohamed bin Ismail v. Tan Sri Haji Osman Saat & Ors* [1982] CLJ 553; [1982] CLJ (Rep) 581 an objection was taken to the effect that the action should be dismissed as it was commenced by motion instead of by writ. In answer to this Wan Yahya J (as he then was) said:

> On the question of procedure it was submitted that this action should have been by a writ and not by a motion and that on the authorities of *Haji Ismail bin Che Chik v. The State Commissioner, Penan*g [1975] 1 MLJ 136 and *Sungai Wangi Estate v. Uni* [1975] 1 MLJ 136, the court should dismiss the application. In my opinion, both these cases are not proper propositions for dismissing a suit for irregular procedure. Although in both these cases the court commented that the mode adopted by the applicants was inappropriate, it nevertheless went on to consider and determine each case on its merits. To my mind the procedure adopted by the Applicant merely rendered the proceedings irregular but by no means void. In such a case, the court may, if it is satisfied that the parties, their Counsel and the court will not be seriously embarrassed by the irregularity and that such irregularity will not lead to injustice to any party, proceed to hear and determine the case. This point was discussed at p. 272 of *Haji Ismail*'s case *(supra)* wherein Chang Min Tat J. (as he then was) said at p. 272:
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> > All in all, it does appear to me that there is considerable substance in the contention of the learned Legal Advisor. On the other hand, however,

there cannot be any serious embarrassment to the parties or their counsel in presenting their contentions or to the court in hearing the case and coming to a decision. No disputes of facts arise and the matter stands to be decided on a consideration whether there are powers to make the subsidiary legislation providing for an increased rental in the case of land hitherto held under a statutory land grant. For myself, if, in a summons for directions, any application was made in an action commenced by writ for similar reliefs for an order to try the action as on a motion, I would not have expected objection from the respondent and I would not myself have hesitated to make the order.

On the question of procedure an objection was further raised by the 1st Respondent on the failure of the Applicant to intitule his Motion. It was submitted that this amounted to non-compliance with the form prescribed under O. 8 r. 3 and that in turn it had left the Respondent in the dark as to the legal nature of the relief claimed, ie, whether it is under section 41 or 42 of the Specific Relief Act, or under O. 53 of the Rules of the High Court, or under Judicial Review. The answer to this, as provided at the hearing itself, is that the Applicant is proceeding under section 41 of the Specific Relief Act as an adjunct to prerogative remedies.

The question for my immediate consideration however is whether the Respondents were truly embarrassed, or in any way prejudiced by this slight omission. My view is that they were not. If by any chance they were, they could have taken out summons for directions or they could have, after hearing the Applicant's case, asked for an adjournment to prepare the reply. The Respondents did neither of these but merely chose to raise this only at the hearing. The eloquence and thoroughness with which Mr. C.K.G. Pillay, Counsel for the 1st Respondent, addressed the court and the contents of his written submission indicate anything but lack of preparedness and appreciation of the claim they were faced with.

I am of the view that this is a proper case to invoke the powers and exercise my discretion under O. 2 and O. 92 r. 4 of the Rules of the High Court and to rule the motion to proceed and be considered on its merits. Moreover the Applicant had an arguable issue to be tried. (See *Merricks & Anor v. Nott Bower & Anor* [1964] 1 All ER 717).

Finally I refer to *Lee Phet Soon v. Hock Thai Finance Corp Bhd* [1994] 4 CLJ 687 where Abdul Kadir Sulaiman J held that the commencement of the proceeding in that case by the wrong mode was sufficient to dismiss it. In my view his Lordship was compelled to take such a stand as a reading of the judgment does not disclose any application being made to cure the irregularity. In the circumstances the irregularity remained as one and the order made by the learned judge cannot be assailed.

On the facts of this case I was satisfied that nobody will be prejudiced as a result of me allowing the application as it has been made *ex parte*. The justice of the case and the urgency of the matter bearing in mind the fact that FHL is now six months pregnant warranted a favourable consideration of the application. Accordingly, I ordered that the originating motion be treated as an originating summons.

Application To Amend The Prayer

The prayer in the summons required to be amended to enable the court to give the required consent. An originating process may be amended at any stage of the proceedings as authorised by O. 20 r. 5 read with r. 7 of the RHC. The overriding principle with regard to amendments is that contained in O. 20 r. 8 which provides that, generally speaking all amendments will be allowed at any stage of the proceedings and of any document in the proceedings (other than a judgment or order) on such terms as to costs or otherwise as the court thinks just. An amendment would be refused if it would result in prejudice or injury which cannot be properly compensated for by costs. As the *Supreme Court Practice* 1967 says at p. 291:

> Accordingly, as a general rule either party is allowed to make any amendment in his pleadings or other proceedings which is reasonably necessary for the due presentation of his case on payment of the costs of and occasioned by the amendment, provided there has been no undue delay on his part, and provided also the amendment will not injure or prejudicially affect any vested rights of his opponent.

As the documents in this application do not require service on any other person thereby not resulting in prejudice to anyone and bearing in mind the urgent nature of the application and the fact that the amendment sought can be conveniently inserted in the originating summons I allowed the oral applications to amend the prayer to enable the court to give the required consent.

Exercise Of Discretion Under The Section

Sub-section (2) of the section gives the court discretion to give or withhold the required consent. It is settled law that a discretion must be exercised judicially. Where the required consent is being withheld by the person lawfully authorised to give the consent and the court is required to give the consent the burden on the applicant is heavy. In *Glass v. Glass* [1960] 32 WWR 321 where the parents had withheld consent it was held that such consent should not be given by the court lightly. It was also held that it was insufficient for the applicant to merely allege "love" and pregnancy. The applicant must establish an understanding and appreciation of what marriage means and demands, and the means and capacity to bear the consequent economic and

social responsibilities, and avoidance by marriage of the social stigma attendant on the pregnancy. It was further held that the court has no right to presume that the refusal of the order will cause the applicant to continue his unconventional and immoral conduct. In *Re Baynes* [1961] 36 WWR 239 the infant applicant applied for an order to dispense with the consent of his parents to his marriage with a girl who was pregnant by him. The application was refused on the ground that the power to make such an order exists only if the parents had unreasonably refused or withheld their consent. It was further held that it is not unreasonable to refuse consent where the applicant is a schoolboy whose employment record is untested. In *Re K (An infant)* [1964] ALR 363 it was held that the fact that an applicant was pregnant would not, of itself, justify the making of an order in favour of the applicant. The court also observed that the justification for making an order is a question to be determined on the facts of each particular case. In my opinion the fact that the girl involved is pregnant is a matter that requires serious consideration in the context of Malaysian moral values. In this regard I hesitate to follow Western guidelines where the concept of unwed mothers is an accepted norm of life.

I must stress that this application is not concerned with a situation where consent has been refused by the father of a minor. Thus the burden on the applicant is not as heavy as in the cases I have referred to. This case concerns a couple already married under Chinese customary rites. It was conducted with the blessings of the applicant. The wedding dinner was hosted by the parents of LEW. Thus the customary marriage was conducted with the consent of all the parents except FHL's father for the reason stated in the application. The couple has cohabited as husband and wife since 3 September 1995. FHL is now six months pregnant. The order is sought by the applicant and the couple who wish to formalise their marriage. In the circumstances I was of the view that this is a fit and proper case where the court should exercise its discretion to give the consent as it is impracticable to obtain the consent of the father. Accordingly, I gave the consent prayed for. The order was made in chambers as required by the section.